

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Robert Lee Green, #162479,	)	C/A NO. 9:07-0028-CMC-GCK
	)	
Plaintiff,	)	
	)	<b>OPINION and ORDER</b>
v.	)	
	)	
Anthony Padula, Warden of Lee Correctional	)	
Institution (LCI); Margaret Bell, Assistant Warden	)	
of LCI; Mark Price, Major of LCI; Donald Keeney,	)	
Captain of LCI; Ms. Sellers-McCormick,	)	
Disciplinary Hearing Officer of LCI;	)	
Ms. D. Mitchell, Inmate Grievance Coordinator	)	
of LCI; W. Brinson, Lieutenant of LCI; John Doe,	)	
Officer at Holding Cell at LCI,	)	
	)	
Defendants.	)	
	)	

This matter is before the court on Plaintiff's *pro se* complaint alleging various violations of his rights, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge George C. Kosko for pre-trial proceedings and a Report and Recommendation ("Report"). On September 25, 2007, the Magistrate Judge issued a Report recommending that Defendants' motion for summary judgment be granted and this case be counted as a "strike" under 28 U.S.C. § 1915(g). The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. After two extensions of time in which to file objections, Plaintiff has filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 41(a)(1).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court.

*See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

The court construes Plaintiff’s motion as his indication that he has no objection to the grant of summary judgment. Therefore, the court **grants** Defendants’ motion for summary judgment and dismisses this action with prejudice. However, the court declines to adopt the portion of Magistrate Judge Kosko’s Report which recommends this matter be counted as a “strike” under § 1915(g). *See Bennett v. Cannon*, 206 Fed.Appx. 311 (4th Cir. 2006) (unpublished) (modifying grant of summary judgment to delete assessment of “strike” under § 1915(g)); *Lloyd v. Eagleton*, 203 Fed.Appx. 466 (4th Cir. 2006) (unpublished) (same).

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
November 19, 2007